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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,076	04/09/2004	Robert Edwin Schneider	45568-00481	2197
25231	7590	10/17/2005	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP 3151 SOUTH VAUGHN WAY SUITE 411 AURORA, CO 80014			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/822,076	SCHNEIDER ET AL.
Examiner	Art Unit	
Samuel G. Gilbert	37365	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_\_.  
2a)  This action is FINAL.                    2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-3,12,16 and 22 is/are rejected.  
7)  Claim(s) 4-11,13-15,17-21 and 23-27 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/16/2005.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date.       .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other:       .

## DETAILED ACTION

### ***Information Disclosure Statement***

The information disclosure statement filed 5/16/2005 has been considered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 – the claim is replete with functional language without the required structure for performing the recited function, therefore it is unclear as to what the applicant is intending to claim.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 16 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kasic, II et al(6,537,201)—Kasic--.

Claim 1 – elements –54- and –52- form housing –50-, element –20- is an actuator, a driver is formed by coil –14- and leaf magnet –12-, leaf –12- is connected to actuator –20- and sealing bellows –30- forms a seal as claimed. It is “around the coil and leaf because it is near the coil and leaf.

Claim 16 - elements –54- and –52- form housing –50-, element –20- is an actuator, a driver is formed by coil –14- and leaf magnet –12-, leaf –12- is connected to actuator –20-, element –200- forms the bellows and is a connector while layers –31-, - 33-, and –35- form a seal and claimed. It is the examiner's position that 112 sixth paragraph has been invoked. The element –200- of bellows –30- performs the same function in substantially the same way with the same result as the connecting means therefore the examiner is taking the position that the bellows is an equivalent for the connecting means.

Claim 22 - elements –54- and –52- form housing –50-, element –20- is an actuator, a driver is formed by coil –14- and leaf magnet –12-, leaf –12- is connected to actuator –20-, element –200- forms the bellows and is a connector while layers –31-, - 33-, and –35- form a seal and claimed. It is the examiner's position that 112 sixth paragraph has been invoked. The element –200- of bellows –30- performs the same function in substantially the same way with the same result as the connecting means therefore the examiner is taking the position that the bellows is an equivalent for the connecting means. The seal, elements –31-, -33-, and –35- and the element –300- are in two different locations with respect to each other.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Schneider et al (2004/0147804).

The applied reference has a common assignee and at least one inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim 1 – element –102- is a transducer housing, a driver consists of elements –202- and –204- a coil and magnets, element –104- is an actuator, bellows –110- and –122- provide seals.

Claim 2 – the actuator is capable of being connected after implantation, see paragraph [0009].

Claim 3 – element –124- is a tube.

#### ***Allowable Subject Matter***

Claims 4-11, 13-15, 17-21 and 23-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 5,702,342; 4840,178, and 5,456,654 teach related hearing aid structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571-272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert  
Primary Examiner  
Art Unit 37365

sgg